IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

E/665/2006

(Arising out of Order-in-Appeal No. 48/2006 (P) dated 20.4.2006 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s.Jeevan Diesels and Electricals Ltd. Appellant

Vs.

Commissioner of Central Excise, Puducherry Respondent

Appearance

Shri K.S. Jain, Auth. Rep. for the Appellant
Shri K.P. Muralidharan, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing / Decision: **23.06.2017**

Final Order No. 41637/2017

Per Bench

The brief facts are that appellants are engaged in the manufacture of Diesel Generating Sets. On verification of the appellants records namely General Ledger, Debit notes, it was noticed that appellants had collected certain amounts in addition to the amount charged from the buyers and it was also reflected in the Annual sales tax return that such amounts collected was sales tax. The appellants being under sales tax holiday vide notification 15/74 issued by Government of Pondicherry, for the disputed period, the department was of the view that the amount received as sales tax from customers and not remitted to the government is an additional consideration and the same is liable to be included in the assessable value. Accordingly a show cause notice was issued and after due process of law, the original authority confirmed the demand of Rs.2,05,212/- along with interest and imposed equal penalty. In appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, the CEO, Shri K.S. Jain appeared and argued the matter. He submitted that, the demand is raised by department without understanding the real facts. The appellant is under tax holiday for the disputed period as per Notification No.15/74 issued by Government of Pondicherry.

3. As per this notification, the appellant avails tax holiday for both local sales tax and Central sales tax levied for inter-state sales. During 2002, Section 8 of Central sales tax Act, 1956 was amended, wherein the sales tax exemption in case of interstate sales can be claimed if C Form and D Form is produced as evidence of interstate sales. Though a Central Act, the same is collected by State/Union territory. That therefore in order to implement the amendment to Section 8 of Central

sales tax Act, the notification issued by Government of Pondicherry required to be amended or to be superseded by issue of fresh notification. The Government of Pondicherry did not do so. In such situation, the appellant had opted to collect 10% Central sales tax as interest free deposit from Customer who did not produce C Form, at the time of clearance of goods. When C Form is produced before the sales tax assessment of appellant, the amount collected is refunded to customer. In case the respective buyer does not produce C Form, then appellant would deposit the amount with sales tax authorities the amount so collected was reflected in their balance sheet under the heading 'Current Liabilities and Provision - deposit'. The appellant had not collected any amount illegally nor suppressed any facts. That appellant had collected the amount as abundant precaution not only to safeguard the interest of appellant, but also that of Revenue. The observation of the authorities below that appellant had not submitted necessary evidence in false since the appellant had furnished balance sheet, General Ledger and other accounting details. The amount collected was disclosed in all accounts and reflected in balance sheet and also explained to the department. The authorities below have relied on the judgment in the case of *Zandu Pharmaceuticals 2005 (69) RLT 643 (CESTAT - MUM).* The said case pertain to deduction of equalized sales tax when no sales tax is paid on goods produced in an exempted area. The facts in this case are entirely different. The appellant was refunding the amount on production of C Form and if not produced, would deposit & the amount & before sales tax authorities and the same was also disclosed in sales tax returns. That it is clear that appellant had no intention to evade payment of duty. He also produced the notice received from CTO, Pondicherry with regard to the amount collected and reflected in sales turnover for the period. The assessment order for the year 2003-2004 is also produced.

4. The learned AR Shri K.P. Muralidharan reiterated the findings in the impugned order. He submitted that when appellant has collected Central sales tax and not remitted to the Government the same becomes additional consideration and is includable in the assessable value. He relied upon various judgments Commissioner of Central Excise Vs. Super Synotex (India) Ltd 2014 (301) E.L.T. 273 (S.C.).

5. Heard both sides and perused records carefully.

6. The learned CEO appearing for appellant has explained the background on which the appellant had started collecting 10% Central sales tax. The notice as well as assessment order by CTO produced before us clearly shows that the appellant has disclosed the collection of amount in the sales tax return. The assessment order also observes that appellant was given

time to produce C Form. This being so, the contentions raised by appellant are not without substance. If the said amount is assessed by sales tax authorities, then the same cannot be considered as additional consideration so as to be included in the assessable value. For verifying these aspects, the matter requires to be remanded to the adjudicating authority who shall look into the contention put forward by appellant and also verify whether the amount has become assessed or come under the supervision of Commercial Tax Authorities. We therefore set aside the impugned order and remand the matter leaving all issues open.

7. In the result, appeal allowed by way of remand.

(Operative portion of the order was pronounced in open court)

(**V. PADMANABHAN**)	(**SULEKHA BEEVI C.S.**)
Member (Technical)	Member (Judicial)

Rex

Customs Excise & Service Tax Appellate Tribunal

सत्यमेव जयते

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सहायक पंजीकार / Asst. Registrar
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